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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**C.W.P. No. 10176 of 2007**
Date of decision: 17.11.2007

**Shanti Devi** **...Petitioner**

**Versus**

**The State of Punjab and others** **...Respondents**

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. M.L.Sachdeva, Advocate for the petitioner
Mr. Ram Lal Gupta, Additional Advocate General, Punjab
None for respondent No. 4.

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**RAJESH BINDAL, J.**

On account of death of the earning member of the family, family pension was released to the petitioner. Along with the family pension, petitioner was granted dearness allowance thereon. According to the instructions issued by the State Government, dearness allowance was not payable on family pension in case where employment had been granted to a dependent family member of the deceased employee who had died in harness. Despite the fact that son of the deceased had been granted employment on compassionate grounds, the petitioner was paid dearness allowance on her family pension by mistake. On realising the mistake, the authorities stopped the payment of dearness allowance on family pension and started to effect recovery of the dearness allowance already paid.

The controversy in hand raises two issues; namely:-

1) Whether the petitioner was entitled to dearness allowance on family pension ? and
2) Whether recovery could be effected in a situation wherein the recipient had not made any misrepresentation to the authorities ?

Insofar as the first issue is concerned, the controversy in hand stands adjudicated upon by the Apex Court in **H.S.E.B. and others Vs. Azad**

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**Kaur (Civil Appeal No. 5835 of 1998, decided on 18.8.1999)**. In view of the determination of the Apex Court on the issue under reference, I am satisfied that the claim of the petitioner for dearness allowance on family pension is misconceived. The first contention of the petitioner is, therefore, not accepted.

The second issue relates to the recovery of dearness allowance wrongfully paid to the petitioner. It is not a matter of dispute between the parties that the payment of dearness allowance to the petitioner was not based on any misrepresentation or fraud at her hands. It is clear that dearness allowance was wrongfully paid to the petitioner by the respondents unilaterally. That being so, in view of the decision rendered by the Apex Court in **Sahib Ram Versus The State of Haryana and others** , **1994 (5) SLR 753,** which was further relied upon by this Court in Civil Writ Petition No. 891 of 2003 (**Mukhtiar Singh and others Vs. The State of Punjab and others** ) decided on January 20, 2004 **,** I am satisfied that the recovery should not be effected from the petitioner.

In view of the above, the instant writ petition is dismissed in sofar as the claim of the petitioner for dearness allowance on family pension is concerned, however, the prayer of the petitioner is allowed in respect of the recovery sought to be made from her. In case any recovery has been made from the petitioner in the interregnum, the same shall be refunded to the petitioner within a period of four months from today.

Disposed of in the aforesaid terms.

**November 17, 2007** **(Rajesh Bindal)**
**Pka** **Judge**

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